

Framework for Change:
Transforming Iraq's Media
Landscape

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EXECUTIVE SUMMARY

This document is the result of a consultative effort by more than seventy-five Iraqi, Arab, and Western media lawyers, media policy experts and journalists representing more than 15 countries¹ who met in Athens, Greece from 1 – 3 June.

Over the course of three days, the conferees participated in a spirited and wide-ranging discussion that drew on their experiences in an effort to further refine and revise the media framework--a document drafted in Cairo by a small team of media law and policy experts in advance of the conference. The Cairo working group was brought together by Internews Network, a non-governmental organization (NGO) that fosters independent media in emerging democracies.

The ultimate goal is to achieve free, independent and pluralistic Iraqi media that practice promote, and protect freedom of expression in a democratic society. This goal requires reform of the regime's harsh laws, edicts and regulatory structures, to erase the legacy of legal and extralegal repression of free speech and media of the past three and a half decades. It requires a return to the developing legacy of free speech and press in Iraq in the years and decades before the 1950s, when the nation's media, in the words of one international free media advocate group, were among "the freest and most vibrant in the Middle East." Finally, it requires short-term goals for the interim, occupation period: to begin building permanent legal foundations for free media, including the Internet, while providing security and protection during the transition from repression to freedom.

This document presents a plan to reach those short and long-term goals. Included are detailed policy recommendations for legal and regulatory measures to be implemented during the interim period, to promote media freedom while providing sufficient regulatory authority to prevent misuse of the freedom in ways that would be harmful to the process of building freedom and democracy. Steps to be taken immediately include:

¹ Iraq, Egypt, Bahrain, Morocco, Lebanon, Jordan, Afghanistan, Indonesia, Sudan, Turkey, the United States, Great Britain, France, Germany, Russia, Greece and Romania

- ♦ An immediate declaration by the Interim Authority that all media-related laws and edicts of the regime are null and void and will not be enforced. These include harsh criminal provisions with heavy jail terms and even the death penalty for such offenses as criticizing the president and government offices, lengthy censorship provisions and rigid controls of print and broadcast media. The announcement should state as policy that prison terms are inappropriate penalties for journalistic offenses with the exception of incitement to violence, and that censorship will not be practiced. The Ministry of Information is abolished.
- ♦ A concomitant declaration by the Interim Authority that all regulation and protection of media shall observe recognized human rights standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination, with respect for the cultural, religious and political situations in Iraq today.
- ♦ Adoption of an Interim Media Law. The law shall cover all regulation of media during the transition period, to Sunset on adoption of permanent media laws by a democratically elected lawmaking body. The law shall:
 - Contain articles for Defamation, Incitement to Violence, and other needed legal actions.
 - Provide for the creation of a Press and Broadcast Council to lead the drafting and public adoption of a Code of Ethical Conduct for journalists, to administer the code and to attempt to resolve complaints against media for breaches of the codes.
 - Provide for the appointment of an Interim Media Commission (IMC) to regulate media, with authority to allocate radio and television frequencies, monitor content and, when the Press and Broadcast Council is unable to resolve complaints, to fashion remedies or to take and hear complaints for Defamation, Incitement and other legal offenses.

- Provide for creation of a Media Appeals Board to give appellate review to any sanctions imposed by the IMC.
 - Establish as policy that no licenses shall be required for publication of print or electronic media, including newspapers, ~~and~~ magazines, and content on the Internet, or for practice of journalism by individuals.
 - Establish as policy that information, documents and decisions of the Interim Authority are open to the public, with clearly defined exceptions. Journalists (and members of the public) denied access to information or meetings will have the right to appeal to the Interim Media Commission, with a final appeal possible to the Interim Authority.
 - Encourage and facilitate the establishment of private Internet Service Providers.
- ◆ Commencement of the transformation of state radio and television into a national public service broadcaster, which will be editorially independent and accountable to the public. An independent governing body, representing a wide cross-section of Iraqi society, will oversee the functioning of the national radio and television and will guarantee its editorial independence. The government will have to fund the national broadcaster for several years to come. But as the Iraqi economy grows other potential sources of funding will be sought. In the long term the national broadcaster will need to have a method of funding that can further safeguard its editorial independence.
 - ◆ Review of the status of all the government newspapers, and commencement of the process of transforming them into independent commercial entities.
 - ◆ The Internet is a new and powerful communications medium, and one that is of increasing importance to journalists and content producers. Media law and policy need to take into account this medium, and the characteristics that make it flourish. The Internet should be available to all Iraqis at an affordable cost.

- ♦ The success of the spread of the Internet, and therefore its availability and affordability for all residents, depends upon Internet service providers (ISPs) in the private sector being able to do business effectively and without unnecessary restraint. Policies regarding the Internet need to recognize this relationship and encourage entrepreneurs in the sector.
- ♦ Specific types of content on the Internet, specifically pornography, are quite likely to be abhorrent to the majority of Iraqis. Users of the Internet need to be provided with the means, including any assistance needed, to block such unwanted content. Objectionable material blocked by others should be carefully defined so that court challenges can be mounted in the event of disputes over its acceptability.
- ♦ Effective Internet policy depends critically upon an underlying competitive telecommunications infrastructure. New telecommunications law and regulatory policy, from an independent regulator, should do nothing to block the introduction of competition at any level of the telecommunications structure, thereby laying a good foundation for effective Internet policy and use.
- ♦ E-commerce and e-government applications are powerful drivers of both economic growth and democratic processes. The ability to implement applications in both areas should be anticipated by ensuring that the new civil code includes a statement that no document shall be denied legal effect solely because it is in electronic form. Such a statement legitimizes the use of e-documents, and paves the way for an expansion of their use, and consequently a deepening and refinement of the policy issues surrounding them.
- ♦ Encouragement to journalists to form independent journalists associations to adopt and administer ethics codes, to protect the safety of journalists, to conduct education and training to increase professionalism, to advocate for free media laws and policies, and to work with the Interim Media Commission and the Press and Broadcast Council. Journalists shall not be required to be a member of any association.

- ♦ Establishment of a comprehensive program of training. Training will be needed throughout all levels and functions in all media sectors, in strategic planning, management, financial, editorial, technical, and production skills.
- ♦ Establishment of an Independent Broadcasting Authority to be responsible for frequency allocation for granting broadcast licenses. The Authority will be protected against political influence and will work according to clearly defined criteria. In close consultation with broadcasters and representative institutions of civil society, it will develop regulatory guidelines for the electronic media.
- ♦ Review of the status of the state news agency, INA, with the objective of transforming it into a national public service institution, which will be editorially independent, and accountable to the public.
- ♦ Encouragement of both the public and private sectors to establish online services for audiences in Iraq and abroad as telecommunication infrastructure improves and access to the internet grows in Iraq.
- ♦ Assistance and encouragement for the print sector, through the Press and broadcast Council, to develop a self-regulatory code of conduct in accordance with Iraqi and international conventions, in close consultation with the representative institutions of civil society.

Toward these ends, the plan draws from the experience of internationally assisted efforts to create free media, a legal environment to enable and support them and hold them to high professional standards, and a system of education and training to help them reach those standards. An Interim Media Commission, governed by a board with an Iraqi majority and international members of the highest professional reputations, will set policy, appoint a Director General, oversee and review decisions. A key component will be creation of an Iraqi Press and Broadcast Council to adopt and administer a Code of Professional Conduct, taking, hearing and attempting to resolve complaints of ethical and legal wrongdoing by media. The role of the Council will be the first step in a procedure for handling complaints that will also include de the Interim Media Commission and a

Media Appeals Board. The Press and Broadcast Council will involve Iraqi professionals from the earliest moment, a key step in creating the self-regulatory system necessary for free media.

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PREFACE

Iraq is the cradle of civilization. It is where the written word first appeared in Uruk 5,000 years ago; it is where the first law was ever enacted, the Hamourabi code, and it is where the seventh wonder of the world, the Hanging Gardens of Babylon, was situated. A country of such historical, and cultural depth, and strategic importance in the Arab and Islamic world, must take a lead in all aspects of modern life. Iraq is now poised to take its rightful place as a world leader, respected and admired not only for its history and culture, but for its embrace of universally accepted democratic principles, steeped in ancient traditions and refined through the centuries.

Free and independent media are a prerequisite to a democratic state and the free society that we aspire to in Iraq. Our plan for the reconstruction and development of Iraq's media is rooted in the vision of a social and political future that our people deserve and aspire to: a free, independent and united Iraq, where government is the servant of the people and accountable to them; where there is peace, justice, and the rule of law; and where people can build a modern society in accordance with principles of democracy, international law, tolerance and human rights.

This vision cannot be realized without free and independent media, which can reflect our society as it is, truthfully and without bias. Our people must be able to believe what they are told by their radio, television and press if they are to trust their fellow citizens and their leaders. The media must become an essential instrument in making the government transparent and accountable, and in generating national debate on the crucial decisions which we will have to make in the rebuilding of our country in the years ahead.

Our people have lived through more than three decades of wars, repression, human rights abuses and poverty. The media served the oppressors and ignored the plight of the oppressed. But despite tight government controls on the flow of information, Iraqis sought information elsewhere, and followed news and events through international radio broadcasters, as well as through their friends and relatives abroad. Iraqis are cultured and sophisticated people. They appreciate and depend on reliable information.

People all over the world, and Iraq is no exception, have access to a multitude of international radio and television channels, thanks to modern satellite communications. This massive flow of information cannot be controlled and our media have no choice but to compete in a global market.

Over the next days, weeks and months there will be extensive consultations on the general policy directions and specific recommendations set out here, with Iraqi journalists, representatives of civil society, and a wide range of other stakeholders inside and outside Iraq. We ask them to join us in our determined efforts to launch a new era for Iraqi media where radio, television, and the press meet internationally accepted standards for fairness, balance and accuracy, and the Internet is allowed to be an open and unfettered source of information and a stimulus in the marketplace. Iraq can be a model for the region, if not the world.

Everyone, everywhere in our country should over time have access to the programs of the national radio and television, which will reflect fairly the ethnic, linguistic, and cultural diversity of all people of Iraq, men and women.

We are engaged in an enterprise of great importance: helping to create laws and a legal system conducive to freedom and democracy. We understand that our task is important not just to Iraq but to the entire Arab community. We are aware that modern democratic principles and standards must be molded to fit the cultural, religious and political situation of our country and our region. The media in general, and broadcast media in particular, should be sensitive to the cultural and religious values of the Iraqi people; hence, incitement of violence or religious or ethnic hatred should have no place in the Iraqi media. Iraqi society is governed by certain cultural and social norms. The media should avoid unreasonable attacks on cultural and religious values, as well as, personal attacks on individuals. Rule of law must prevail and the media as well as those who feel unfairly burdened by news reports should find protection and fair and honest adjudication under the law.

We recognize that a component of reform that is at least as important as the drafting and passage of laws is education – education to enhance the professionalism of journalism,

education of government and judiciary to increase understanding of the needs of free media in a democracy, and education of the people to understand that the media will be their watchdog, but they must take responsibility for the future of democracy in Iraq.

STATEMENT OF PRINCIPLES

In addition to the principles expressed in international human rights instruments, the following principles serve as the foundation of this plan:

- ♦ Free media representing all groups and divisions of society, giving independent scrutiny to and comment on the workings of government and institutions, serving as the public's watchdog and advocate, providing a free flow of information and diverse opinion are essential to democracy.
- ♦ Mass media are to be protected from government interference and the interference of non-governmental authorities. Censorship is forbidden.
- ♦ Respect for religious, ethnic and cultural diversity is to be guaranteed under the principles contained within international human rights instruments; therefore, inciting religious, ethnic or cultural intolerance is a misuse of freedom of expression and media.
- ♦ Any provisions restricting freedom of expression and media should be incorporated within the law, to be specifically and narrowly defined and subject to tests of necessity, proportionality and pressing social need as defined by democratic and human rights courts.
- ♦ Journalists have the right not to reveal the sources of information to whom they have promised confidentiality.
- ♦ One does not need a government license in order to practice journalism as a profession.
- There shall be no licensing or registration of newspapers, news agencies, magazines and periodicals or other printed media, or of web sites or other sources of content on the Internet, other than that required by any business seeking to engage in a commercial or non-profit activity.
- The Internet is a promising new medium for both individual and mass communication. Its expansion and use should be encouraged and not restricted. It should be accessible to and affordable by all people in the country.

- The development of e-commerce should be encouraged as an avenue of economic advancement for Iraq. No document shall be denied legal effect solely because it is in electronic form.
- ♦ Broadcast operators will be required to seek licensing for the purposes of frequency allocation. Such licensing, issued by an independent authority, shall include a limited set of standards that take into account that the broadcast airwaves are a limited resource and are held in a public trust.
- ♦ The following issues shall be considered:
 - a. Allocation and administration of licenses should be transparent and subject to due process, with an automatic process of renewal when the license is non-contested and an automatic right to appeal when the license is revoked.
 - b. Competition/Cross Ownership/Foreign Ownership may be subject to limitation
 - c. Diversity of ownership, information, opinion and ideas should be promoted
- ♦ National and regional government broadcasting shall be transformed into public service broadcasters. The public service broadcasters shall have editorial independence. The public service broadcasting authority shall be responsible for ensuring that editorial independence is maintained and that public service broadcasters adhere to modern democratic standards of public service broadcasting.
- ♦ Until new criminal law is in place, laws that prescribe criminal penalties for media or journalistic offenses shall be suspended. Criminal prosecution for journalism offenses shall be stricken from the law.
- ♦ Truth is an absolute defense in defamation cases. Reporting in the public interest reporting in good faith and in a fair and balanced manner should be taken into account and are also defenses
- ♦ Journalists will have the right to form professional associations to promote professionalism through training, education and the writing of codes of ethics and to advocate for editorial independence, the rights of journalists and the rights of an independent media. Government shall have no role in this process.
- ♦ There should be no statutory regulation of the print media. It may be desirable to set up a media complaint commission, whose decisions should be subject to due process and will be reviewed and enforced by the interim authority. This process will be in effect until the law on mass media freedom is adopted.
- ♦ Old laws and legislation are to be applied to the extent that they do not contradict these principles.

- ♦ The Ministry of Information shall be abolished. Where necessary other independent agencies and regulatory bodies will be established in accordance with international standards and in fulfillment of the principles referred to in this document. The set up or creation of independent news agencies shall be encouraged.
- ♦ Open government laws should be adopted including access to information and the decision making process, ensuring that the business of government is open to public scrutiny.
- ♦ The Internet shall be freely available to as many people as possible in the country.

TRANSITION STRATEGY

1. Objectives.

To achieve a free, independent and pluralistic Iraqi media that promote and protect freedom of expression in a democratic society, in accordance with the statement of principles outlined here, requires a process of reform. The aim of this section is to outline a plan to reach that long-term goal. The plan includes detailed policy recommendations for legal and regulatory measures to be implemented during the interim period in the aftermath of the collapse of a harsh and repressive regime, with goals of promoting media freedom while providing sufficient interim regulatory authority to prevent misuse of the freedom in ways that would be harmful to the process of building freedom and democracy.

2. Factors to be Considered

The media in Iraq have long been subject to draconian state control. The brutal suppression of any alternative voices has been the norm and all outlets of indigenous broadcasting have been entirely the preserve of the government of the day. All press and broadcasting has been controlled through the Ministry of Information, which became under the regime an icon of censorship, disinformation and propaganda.

Clearly, free, independent and impartial media are essential to the development of the institutions of a democratic civil society. Their role as the watchdog over government and in ensuring public accountability is crucial. In Iraq this function is unprecedented in recent times. Therefore, it is vital that the architects of Iraq's democratic reconstruction address the terrible legacy of the regime's media. In so doing it will also be necessary to take account of the prevailing conditions within the society as a whole; where ethnic tensions, repression, civil strife and violent retribution are deeply engrained.

Post-conflict peace building must recognize the characteristics of post-conflict societies. Within this context experience has shown that, in the absence of a common national identity, media tend naturally to serve interests that can be virulently partisan. Such

phenomena often lead to denouncements and *ad hominem* attacks in the press that can quickly contribute to raising tensions that result in actual violence and, as a consequence, retard rather than promote democratic development. Similarly, a transition strategy for the media must recognize that all of Iraq's institutions are in transition. Of particular relevance to the development of a legal environment friendly to free media, the judicial system will be the subject of rigorous reform. With this in mind it must be accepted that in the development of a new legal framework for the media it will not be possible, during the period of transition, to assume the impartiality or democratic credentials of the court system.

These conflicting factors ensure a tension in practice between freedom of expression and restraint. Achieving the right balance between freedom on the one hand and accountability on the other can often be complicated and difficult. While democracy requires a free press, at the same time it requires one that is accountable to the society, and the individuals within it, which it serves.

Notwithstanding these difficulties the transition strategy must have as its overriding goal the development of a framework that creates the necessary space for the fullest exercise of freedom of expression as defined in the International Covenant on Civil and Political Rights (ICCPR) and other international human rights instruments. It must empower independent and professional journalism rather than restraining it and it must encourage pluralism and diverse political debate.

3. What Needs to be Done

In distinguishing what has to be done immediately and what can only be achieved in the medium to longer term it is necessary to identify interim measures that should be enacted through the transitional administration and those that may supercede these as a consequence of normal democratic institutional development. No package of laws will be of any use if there is no parliamentary process to enact them or a judicial system capable of implementing them. However, before considering interim arrangements and the longer-term institutional structures it is necessary to identify the categories for reform. These fall into four broad areas:

- ♦ The overall legal framework;
- ♦ Regulatory structures for broadcast and print media;
- ♦ Public service broadcasting; and
- ♦ Professionalization, training and public education and awareness.

4. Legal Framework

Legal Framework: The popular view of law in relation to freedom of expression tends to be negative: people think of censorship and restrictions designed to gag the press or stifle free speech. This was certainly a legitimate view of media law in Iraq, where such law was used to protect the regime in power against the scrutiny and criticism of its people and to strangle voices of opposition or dissent. Nevertheless, the very concept of freedom of expression, as we have come to know it, comes from the definitions enshrined in international law, specifically Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a signatory, Article 10 of the European Convention on Human Rights (ECHR), and other international and regional human rights instruments consistent with the Declaration. These international instruments provide the provisions that underpin national media laws in liberal democracies. Freedom of expression requires a legal framework to protect, encourage and promote it. Law in the media sphere should be designed to empower and enable journalism rather than restrain it while at the same time protecting the rights of the individual against such things as hate speech, incitement to violence, defamation and intrusion of privacy.

One of the main differences between media laws in a democracy and those of a totalitarian autocracy is that in free societies, restrictions on media are not part of the criminal code. For example, a basic principle of modern media law is that prison is a disproportionate, chilling and improper punishment for virtually all journalistic offenses. The conclusion of democracies is that criminal laws against journalists should be repealed and replaced by civil action initiated by the injured parties.

Under Saddam Hussein numerous highly repressive laws and restrictions were passed and rigorously enforced. According to the US State department's 2001 Iraq Country report on Human Rights Practices, these laws included:

“ Several statutes and decrees that suppress freedom of speech and of the press, including: Revolutionary Command Council Decree Number 840 of 1986, which penalizes free expression and stipulates the death penalty for anyone insulting the President or high government officials; Section 214 of the penal Code, which prohibits singing a song likely to cause civil strife, and the 1968 Press act, which prohibits the writing of articles on 12 specific subjects, including those detrimental to the President, the Revolutionary Command Council, and the Baa’th Party. In February (of 2001), opposition press reported that the Government added the penalty of cutting out the tongues of anyone who ridiculed the President. There were several reports during the year that the penalty was imposed on citizens.”

In devising a transition strategy for reform of the Iraqi media and establishing a legal framework commensurate with modern democratic practice it is not just necessary to repeal and replace these repressive and unacceptable laws but also to consider the judicial system that enforced them. New law on its own will not be sufficient to free the press from the fear of repression, the judiciary must be in a position to understand and implement the new framework and the profession must also understand the new rights and obligations it grants them. It is for this reason that we advocate a two-stage process based on an interim procedure leading to the development adoption of a more appropriate long-term framework that takes account of the specific conditions and cultural attitudes of Iraqi society.

The detailed elements of both these stages are explained more thoroughly later in this paper but they are broadly as follows:

Interim Framework

The interim framework would include an Interim Media Law, which would empower an independent Interim Media Commission (IMC) to replace the Ministry of Information's

role in the media sphere. It would be promulgated by the Interim Administration. The IMC would manage the transition process and administer the application of the specific provisions of the interim law with respect to media regulation through an administrative procedure. It would also manage the creation of a public broadcasting system alongside a genuine commercial or private one including a system of frequency spectrum management and broadcast licensing. This interim procedure is intended only to be in place until such time as a parliamentary system of government has been introduced, which can consider and adopt new long-term laws and the judiciary is in a position to implement them. We will argue later how this will be achieved but an important and vital element will be public education and professional training.

Long-term Framework

The long-term framework will be developed with the technical assistance of the IMC in consultation with the profession and local and international experts and culminating in passage through parliament. This framework would include legislation in the following areas:

- ♦ **Civil** defamation.
- ♦ Access to or freedom of information.
- ♦ Whistle blowing and the protection of sources.
- ♦ Hate-speech and incitement **to violence**.
- ♦ Privacy.
- ♦ Public broadcasting.
- ♦ Frequency spectrum management and broadcast licensing
- ♦ .

5. Regulatory Structures

While licensing of journalists, newspapers, magazines and other print media is regarded as censorship and improper under modern democratic media law standards, regulation of the broadcast media is a standard practice based on the notion that broadcast frequencies are a limited resource that cannot be owned by anyone. Frequencies are in effect held in public trust and access to them should be regulated to ensure that they are allocated in a fair and transparent way to broadcasters who will use them responsibly. This is normally achieved through a system of licensing that is required by law and administered by an independent licensing body or agency. Such a body would establish minimum structural, technical and content requirements consistent with internationally recognized standards of broadcasting. These requirements are normally laid out in a series of codes of conduct, compliance with which are conditioned on the licenses. Managing the frequency spectrum must be an integral and technical part of such a system to ensure that the broadcasters do not interfere with each other and operate on mutually complimentary frequencies at the correct power levels.

The Strategic Plan proposes to establish a system that must be established in Iraq as quickly as possible to control the inevitable rapid and anarchic explosion of partisan electronic media, which has been seen in many other post conflict situations.

Regulation of the print media in post-conflict situations is a much more controversial issue. In principle it should not be done at all. The written press should be subject only to those laws that apply to individual citizens through the civil code which provide protections against such things as libel, incitement **to violence** and intrusion into privacy etc. Nevertheless, in the interim period where the situation in Iraq will continue to be akin to a state of emergency it may be necessary to apply certain statutory restrictions.

European and International democratic law provides for narrow, proportionate restrictions on freedom of expression to protect national security or public order and safety; or at the individual level, ensure respect for the rights or reputation of others. Such rights include the right to life and a fair trial.

In justifying any restrictions at all the European Court of Human Rights applies three tests. These tests are, first, that the restrictions be clearly defined in accessible law;

second, that the reason for imposing a restriction be one that is defined by the international instruments, i.e. protection of the rights of others, including reputation, privacy and the right to be free from certain, as well as society interests including public order, national security, health and morality. For example, Article 19 of the ICCPR makes clear that such duties and responsibilities have a public, or community dimension and an individual dimension. In appropriate circumstances, restrictions may; and thirdly are they necessary in a democracy, the specific requirement being whether there is a “pressing social need”. There is considerable case law defining these terms in the European Court of Human Rights, as well as the courts of democracies.

Given the current circumstances in Iraq, no one would deny the current levels of political, religious and ethnic tension. These tensions are also clearly such that violence and civil disorder could result as a consequence of incitement or hate speech. In this context and given experience of other similar situations it will be necessary to introduce some narrowly construed restrictions with built in “sunset” provisions during the transition phase. The principle justification for these is their necessity for free democratic development. However, the overall aim must be to develop a process **in which government has no role in the regulation of the written media**. Both of these needs would be achieved by the establishment of a non-statutory code of conduct, written and adopted in a public process with contributions and comment from journalists, journalists associations and the public and overseen by a Press and Broadcast Council that would include in its membership representatives of various professional journalists associations.

A final element of regulation that may be necessary during the transition phase will be to provide some form of regulatory mechanism to ensure fair access to printing presses. These are currently all state owned. Similarly access to print paper must also be examined to ensure that this cannot also be used as another indirect restriction on publishing.

6. Public Service Broadcasting

Indigenous broadcasting in Iraq seems to have fallen into two technical categories that in reality were virtually indistinguishable. The first is “State” broadcasting; the second, the

“so called” private broadcasters all of which were owned directly by Saddam Hussein’s immediate family. Dealing with the first is in theory relatively simple, as it should be transformed into Public Service Broadcasting. However, before considering how this might be done it is necessary to think for a moment about the second. The reality is that in this second segment the nominal owners have long since fled the field and as such its infrastructure is in a legal limbo. It will therefore be necessary to take this infrastructure into trust so that it can be offered for public tender when appropriate.

In considering Public Service Broadcasting it is necessary to identify the principles that distinguish it from state broadcasting. State broadcasting is **often** synonymous with centralist, one-party states. It is also a feature of oppressive and totalitarian regimes where control of information and the means to it is seen as essential to the maintenance of power. State broadcasting is about state control, where the voices of the regime predominate and the voices of dissent are suppressed. Public service broadcasting on the other hand is designed to independently inform, educate and entertain the public; in other words, to deliver a service on behalf of the people rather than for the government or state. Public service broadcasting is thus accepted as an essential tool of democracy especially in societies that are in transition where it acts as a credible conduit for public education and political debate.

In this context and in Iraq, public service broadcasting will be vital in acting as an agent of pluralism and political diversity and as an instrument for building a constructive national identity through the provision of **free flows of information and diverse** opinion. Public service broadcasting will also be important in sustaining minority languages and culture in a non-divisive fashion and in a way that contributes to reconciliation, tolerance and unity.

The World Radio and Television Council considers that there are four essential principles behind the provision of genuine public service broadcasting. These are universality, diversity, distinctiveness and independence:

- ♦ **Universality.** Public service broadcasting must be accessible to every citizen. This is a deeply egalitarian and democratic goal designed to put all citizens on the same

footing whatever their ethnicity, social status or income. Public broadcasting should endeavor to make the whole of its programming accessible to the whole population. Thus, while it should promote culture and language and demystify ethnic differences, it should not allow this to jeopardize its universal appeal by becoming the exclusive preserve of a cultural elite or ethnic group.

- ♦ **Diversity.** Public service broadcasting must be diversified in terms of the genres of programs offered, the audiences targeted, and the subjects discussed. It should reflect the diversity of public interests by offering different types of programs from newscasts to light entertainment and from the national to the community level. Community television and radio should be encouraged. Diversity and universality are complementary: Providing programming intended, at different times, for youth, for older people, for one group or another, means that ultimately public broadcasting will have universal reach.
- ♦ **Distinctiveness.** In the quality and character of its programs the public must be able to identify what distinguishes public service broadcasting from other services. This is particularly true in a society like Iraq where there must be an obvious difference from the services provided by the old state broadcaster. Similarly it must also be distinguishable from the vast array of commercial alternatives available on satellite and other channels.
- ♦ **Independence.** This is the most fundamental and non-negotiable principle of public service broadcasting, which must be a forum where ideas are expressed freely and where information, opinions and criticism circulate without interference. This is only possible if the independence and thus the freedom of public broadcasting is maintained against political influence and commercial pressures. Mechanisms are required in law and within the organizational and administrative structures to ensure that this essential principle is upheld. Trust is crucial to the success of public broadcasting and if the government, for example, were seen to influence the information provided by the public broadcaster, people would no longer believe in it. The same would apply if the audience believed that

programming was being designed for commercial ends, particularly if they were being asked to finance it through any form of subscription, license or direct tax.

In ensuring that these principles are upheld, particularly the overriding one of independence, we need to consider how this is achieved and what mechanisms are required. These can be broadly grouped under two headings, financing and governance:

Financing

Secure and stable funding is a vital prerequisite of independent public service broadcasting. This may seem obvious as it applies to any public service or enterprise particularly where budgets and resources are tight and subject to other competing demands as will be the case in Iraq. Nevertheless, if the public broadcasting service is not reasonably confident that it has sufficient funding to survive, it will become more vulnerable to pressures exerted either by the withholding of resources or the provision of ‘strings attached’ *ad hoc* funding.

An ideal financing model for public broadcasting should have three elements. Firstly, it should be guaranteed into the long-term so that politicians cannot interfere. Secondly, it should be sufficient for the broadcaster to be able to carry out the tasks required of it and thirdly, it should be accountable to the public.

One of the problems of recent peace building operations vis a vis public broadcasting has been the gap between aspiration and delivery. Whilst on the one hand there has always been a clear aspiration for a strong public broadcasting system in the Balkans for example, attempts to provide sufficient funding have been inadequate. One of the problems of international governmental aid is that it tends to be provided on an annual basis and is subject to annual review. Recipients are, therefore, rarely in a position to predict what funds will be available year by year. Secondly there has also been a tendency to expect self funding mechanisms, either by subscriptions, license fees or advertising to ‘kick in’ earlier than is realistic. Subscriptions or license fees will not work until the consumers have the resources to pay and government have the mechanisms and

infrastructure to collect. Similarly revenue from advertising cannot be expected to be effective in the absence of a media market or when the economy is in chaos.

If it is accepted that a strong public broadcaster is required for the development of democracy and the establishment of liberal democratic values it must be given the funds necessary for it to be successful. During the set up and establishment phase this can only come from the international community and it must be sufficient to the task. This means the early production of a realistic and practical financial development plan against which contributions can be secured. However, for the medium to long term a mechanism must be put in place in law and practice that provides for a system of financing which continues to uphold the principles of public service broadcasting. Most European public service broadcasters use one or a mix of four sources of revenue. These are advertising, voluntary donations, direct government funding and license fees or subscription.

Firstly, we should ignore advertising as dependence on commercial revenue can create a conflict of interest with public service obligations. Furthermore, and probably more importantly in the absence of a media market, competing for advertising where there is virtually no space for competition is likely to retard the development of the commercial sector. Secondly, voluntary donations, although crucial in the early phase, are not likely to generate enough money to support the type and strength of broadcasting envisaged. Thirdly, direct government funding is generally regarded as undesirable as it is subject to political serendipity and the annual budget squeeze. Nevertheless, a degree of 'one off' government funding may be necessary during the start up phase. Finally, license fees and/or subscriptions have been shown by research and experience to be the most effective and appropriate source of funding. However, the introduction of such a system should not be taken for granted. To be effective it must be enshrined in a law that must be practical and enforceable. Requiring people to buy a license may be difficult in a society where receiver penetration is already quite high and where there is no culture or system of detection and enforcement. Similarly attaching a monthly subscription to a utility bill presupposes a tradition of paying such bills. Notwithstanding these difficulties and based on current international experience it is considered that the best funding solution is to attach a monthly subscription to consumers electricity bills. Nevertheless, such a system

will only become effective if and when there is a culture of paying utility bills and that the consumer understands why and what he or she is paying for.

Governance

The second element to ensuring that the principles of public service broadcasting are upheld is how the service is governed, supervised and managed. Again the most important factor is to embed a system that guarantees editorial independence, prevents political interference and ensures public accountability. In considering this it is not necessary to ‘reinvent the wheel’. The European Broadcasting Union (EBU) is the custodian of knowledge and best practice in this area based on the experience of public service broadcasting across the whole of continental Europe. Importantly the EBU also has specific experience in the development of public broadcasting in the emerging democracies of Eastern Europe and in post conflict situations such as in the Balkans. Based on this experience a Model Law on Public Service Broadcasting was prepared for them by the European Institute for the Media. This law was last updated in January of this year. It is specifically intended as a general model that can be adapted to the particular circumstances of any given country. It is included in this document as the basis for an Iraqi law on Public Service Broadcasting.

Within its many articles from programming and advertising to rights of reply and financing the model law describes detailed mechanisms for supervision and management designed to protect editorial independence, prevent political interference and ensure public accountability. In so doing it lays down three organs of governance; a Broadcasting Council, a Board of Administration and a Director General. According to his own notes, the drafter of the model law describes the functions and make-up of these organs broadly as follows:

- ♦ **The Broadcasting Council:** The Broadcasting Council represents the interests of the general public with regard to programming to ensure that the remit of public service broadcasting as defined in the law is actually fulfilled. The Broadcasting Council also appoints the Director General who is the chief executive officer of the organization and who bears ultimate responsibility for all programming. The

Broadcasting Council also appoints the Board of Administration. The Council should consist of 12 members, coming as far as possible from different groups comprising civil society. These might be universities, theatres, authors, journalists, musicians, farmers, women, youth, sports federations or trade unions etc. However, no one on the Council must hold either elective or appointive office in the government or parliament or work for the broadcaster in any other capacity. The members should be elected by parliament following public nomination hearings. In the absence of a properly constituted parliament the Interim Administration should appoint them but nominees must still be selected through public and transparent hearings.

- ♦ **The Board of Administration:** The Board of Administration is the supervisory body that ensures that the public money funding the broadcaster is spent efficiently and transparently. It should supervise all the business affairs of the organization both internal and external with the exception of programming. It should consist of 7 members who should all be experts in matters of administration and finance. Similarly they should not hold any elective or appointive office in the government or parliament and should be free of any conflicting business interests. The Board should be selected and appointed in a transparent way by the Broadcasting Council.
- ♦ **The Director General:** To be able to fulfill its public service remit in what will become a highly competitive environment, a public service broadcasting organization must have modern, dynamic management structures. One person must be in charge with clear responsibility for programming and general management. He or she must be supported by a strong management team of professionals, with clearly defined tasks and fields of competence. Subject to the approval of the Broadcasting Council he or she should choose this team of directors him or herself. The Broadcasting Council should appoint the Director General and he or she should hold no other elective or appointive government office.

7. Professionalization, Training, Public Education and Awareness

Introducing a legal framework with new democratic laws and regulatory structures are clearly priority objectives as is the introduction of public service broadcasting. However, in order for these to be implemented and operative those who have to administer, receive or be subject to them need to understand them thoroughly. This requires an extensive program of public education. This program needs to be multi-layered and targeted at a variety of audiences. Professional and ethical standards of journalism need to be embedded through a system of professional training. The judiciary must understand how to administer the new laws, why they are necessary and how to ensure that they cannot be abused. And finally the public at large must understand the role and importance of a free press in a free and democratic society. This should include the responsibilities of the press to the society it serves as well as the legitimate rights and expectations of the individuals within it.

Training in professionalism, ethics, media law and business aspects of journalism shall be conducted by the Press and Broadcast Council, and the Interim Media Commission shall have a department dedicated to education and public awareness. Both should include workshops and training for government officials in dealing with independent journalists in an open media environment. Journalists associations, too, as well as NGOs have a vital role to play in this area, particularly in the provision of media programs for media professionals. Such training programs should not just be limited to journalism and media trade-craft but should include management and media business administration. An extensive judicial training program will also be vital as well as programs for the police and politicians vis a vis their responsibilities towards the press and journalists.

In the short term it is recommended that an NGO establish a training school or program of training. This school would run short intensive courses in key areas which would complement and act as a precursor to the establishment of faculties of journalism in local universities which would provide more formal training into the long-term.

In regard to general public awareness and education and in ensuring that media professionals understand the requirements of law and any regulatory structures it is

recommended that any media regulatory agency, interim or otherwise, includes a department of public information and education within its structure.

8. Interim Mechanisms

In having established the need for interim legislation and regulatory mechanisms it is important that a principle of time limitation is clearly defined. Such instruments must have clear built in “sunset” provisions. These are likely to be effected by when the executive administration of Iraq becomes transferred to what approximates a parliamentary system with bodies that can consider, enact and implement new laws. This of course refers as much to the legislature as it does to the judiciary

Four things must be done immediately:

- ♦ Abolish the Ministry of Information and replace it with an independent regulatory agency. This agency during the transitional period will establish a broadcast and temporary print regulatory system as well as assuming responsibility for the development of media law, best practice and public education in media related matters. This agency for the purposes of this document will be known as the Interim Media Commission.
- ♦ Abolish all articles and clauses in the applicable law that contravene the Statement of Principles that has been outlined in this document.
- ♦ Introduce an Interim Media law. This law would be enacted by the Interim Administration and would remain in force until such time as a complete new legal frame work can be introduced through a parliamentary process and the judiciary is sufficiently developed to implement it.
- ♦ Begin to manage the transformation of State TV and Radio into Public Service Broadcasters and take all other certain regime-era “private” broadcasters into trust on behalf of the public, to arrange for them to be disposed of to genuine private operators through a public tender process.

9. Interim Media Law

The interim media law should establish the interim regulatory agency referred to earlier, to be called the Interim Media Commission (IMC), as well as other elements of the regulatory process, the Press and Broadcast Council and the Media Appeals Board. The interim law should empower the commission to manage the transition strategy including the transformation of state broadcasting to public service broadcasting and the adoption of a broadcasting law. It should also include the taking into trust of the so-called private broadcasting sector and the disposal of it in a fair and transparent fashion. Provisional hate speech, incitement and defamation legislation and regulations for the management of the broadcasting frequency spectrum, which would provide for a system of broadcast licensing, should also be included.

A draft media law is included in the Annex.

10. Interim Media Commission

The establishment of an Interim Media Commission (IMC) is key to the transition strategy. It would be the body that should implement the transformation of Iraq's media landscape and manage the pace of reform. In doing this it must be configured to take on the full gambit of tasks that we have described. Initially it should replace the disbanded Ministry of Information and principle amongst its tasks would be the establishment of new democratic institutions that would be answerable to parliament, once such is in place, as well as the public at large. In so doing it would aim to create an Independent Broadcasting Authority to manage the electronic media and a separate self-regulatory system for the written press, based on a press council. However, in beginning this process the IMC would need to manage the implementation of the Interim Media Law as well as developing the longer-term legal framework that would eventually be presented to parliament. It would also need to manage the transformation of the state broadcaster into a public broadcasting service and to regulate the emergence of the commercial broadcasting sector through the introduction of licenses. It would also need to develop a temporary system of press and broadcast regulation for administering complaints and

violations of the Interim Media Law and licensing system. This complaints and enforcement system must be established in accordance with the principle of “due process”, which provides for open public hearings and a separate independent forum for appeal.

We have argued in this strategy that there will be an initial need for some form of regulation of the written press through the application of the Interim Media Law because of the particular conditions that currently apply inside Iraq. Nevertheless, it is important that this corresponds to the key principle that there should be no statutory regulation of the print media. In order to take account of this the Interim Media Law contains articles on defamation; hate speech and incitement **to violence**, which are designed to replace the current applicable criminal law that deals with these areas. Notwithstanding these articles, it is important that we begin as we mean to go on with a mechanism of self-regulation by the profession. Therefore, there should be a body convened under the aegis of the IMC that acts as a Press and Broadcast Council whose aim is to resolve any complaints or disputes without resorting to litigation through discussion or arbitration. This body would be made up of Iraqi Journalists. It would also have an additional role in supporting professional training of Journalists, **adopting guidelines for good, professional journalism** and assisting with public education on media related matters.

In considering a structure and organization for the IMC many of the principles of governance described in the discussion on public service broadcasting also apply in this case. The essential prerequisite must be to guarantee the organization’s independence from government and political influence. It should be financed through licensing fees paid by broadcasters for their licenses. This is unlikely to be sufficient for day to day running in the early stages but it should be introduced immediately to get applicants into the culture of paying fees. In reality the organization will have to be established and run on the basis of international donations for **an indeterminate time**.

The IMC should have two layers of governance and management the Governing Council, and the Director General. There should also be three other separate independent bodies

convened under the aegis of the IMC. These would be the Press and Broadcast Council, the Hearings Panel and an independent Media Appeals Board.

The Commission

The role of the Commission would be to represent the public interest and the media profession and to act as a buffer against government and political interference. It would establish overall policy in consultation with the Director General, who it would appoint, and it would also be responsible for monitoring the organizations overall activities pay particular attention to transparency and due process. It would also be required to review all decisions of the Hearings Board following their deliberations, and decide on proportionate sanctions where and when appropriate. All these decisions would automatically subject to appeal through the Media Appeals Board. The Commission should be composed of seven individuals, comprised as follows: A Chairperson who should be an eminent and senior Iraqi media professional or media/human rights advocate. A Vice Chairperson, who should be an international professional of similar background and status and five other members representing the media profession and civil society. No member of the Commission should hold any elective or appointive political office. The Commission should be appointed by the Interim Administration through an open and transparent process. The Commission should meet bi-monthly or whenever deemed necessary by the Chairperson. Any decisions of the Commission should be delivered in writing and made publici.

Director General

The Director General is the chief executive of the organization. He or she would be the individual assigned with managing the whole transition process. He or she would be responsible for the day-to-day running of the commission, the development of policy and the administration of cases brought on the basis of complaints, the interim law or the licensing system. He should have a deputy whose main task would be to manage the transformation of the state and private broadcasting sector. To enable the Director General to carry out these tasks the IMC would be organized into a number of departments. These would be broadly as follows:

- ♦ **Legal.** The legal department would be responsible for the development of the long-term legal framework and for providing legal advice to the Director General. It would also be responsible for representing the Director General in cases brought before the Press and Broadcast Council if necessary and the Hearings Panel, Commission, and Media Appeals Board on every occasion. It would also assist in the drawing up of broadcast licenses and associated codes of conduct.
- ♦ **Complaints and Monitoring.** The Complaints and Monitoring department would be responsible for receiving and investigating complaints brought either generally or in the context of the interim law. It would convene the Press and Broadcast Council as necessary in order to resolve complaints at source and if this process failed would hand unsatisfied cases to the legal department for presentation to the Hearings Panel. Additionally it would also be responsible for media monitoring, not in the sense of looking for violations, but in order to get an accurate picture of the Iraqi media landscape. This should be done to make sure that media policy development can be properly and accurately focused.
- ♦ **Engineering.** The Engineering department would be responsible for creating a functioning frequency spectrum management plan upon which to base the broadcasting licensing system. It would also be responsible for setting technical standards for the electronic media including satellite, digital, fibre-optic and cable delivery systems.
- ♦ **Licensing.** The Licensing department would formulate and administer the licensing system for broadcasting. Where there is more than one applicant for the available frequency in a given area, competing applicants should be required to present their applications to an *ad hoc* panel which would evaluate the applications and recommend the most suitable candidate for the frequency on the basis of an open and transparent hearing.
- ♦ **Public Affairs and Education.** The role of the Public Affairs and Education department would be to ensure maximum transparency for all of the commission/agencies activities. It should run public education and awareness

campaigns to explain to the public and the profession what should be required of them, the duties and responsibilities that are attached to freedom of expression and what the public should understand, expect and demand from their media. They would also run programs with the judiciary, the police and government officials in order that they can understand their role and responsibilities in supporting a free, open and democratic press. This department would also assist NGO's and other organizations in establishing professional training programs for journalists and media professionals in consultation with the Press and Broadcast Council, which would represent the profession. It would also establish regional offices as necessary to enable professionals from across the country to have a local point of contact.

- ♦ **Finance and Administration.** This department would be responsible for administering what would be a fairly large organization of perhaps more than sixty employees depending on the number of regional offices. It would manage these personnel and the fees collection system that it would be hoped would eventually finance the organization
- ♦ **Press and Broadcast Council.** This Council shall be an independent body that shall write and adopt codes of ethics and guidelines for professional conduct for print and broadcast journalists. It will also have responsibility for assisting in the development of journalistic professionalism through training and education. It will act as an advocate for media freedom and independence. It should also counsel and advise the IMC Director General on broadcast licensing and other matters and shall work with and encourage journalists associations. This Council will also have initial jurisdiction over all complaints against the media or journalists and will attempt to resolve these complaints through mediation and if necessary arbitration. It will be able to hear testimony, dismiss complaints and award limited sanctions such as a requirement to print a correction or apology or to be declared at fault and required to publish the findings of the Council. In the case of complaints that are considered to be serious violations or that cannot be resolved through mediation or arbitration the Council may refer to the Director General who would consider further action through a formal administrative hearings process. The Press and

Broadcast Council will initially consist of seven members to be appointed by the Commission. They should not have any political elective or appointive office and should be selected through an open and transparent process.

- ♦ **Hearings Panel.** The role of the Hearings Panel would be to act as the hearings body for formal complaints against the press and violations of the Interim Media Law and licensing system that could not be resolved by the Press and Broadcast Council. It would be required to take testimony and come to decisions on the basis of public hearings as to culpability, mitigating circumstances and aggravating circumstances considering such things as public interest, truth, **good faith**, impact and degree of damage. On the basis of these decisions the Commission would subsequently decide on appropriate sanctions where necessary and in accordance with the Interim Media Law. The Hearings Panel should comprise: A Chairperson, who should be a media regulatory expert or practicing advocate, and four other members. The panel would meet as necessary and as requested by the Director General in response to complaints and alleged violations of the Interim Media Law or licensing conditions. All decisions of the Council panel should be delivered in writing.
- ♦ **Media Appeals Board.** The Media Appeals Board should be an independent body convened to hear appeals against the sanctioning decisions of the Commission. It should meet only when required and as requested by the Director General. All those subject of sanctioning decisions of the Commission should have an automatic right of appeal to be submitted within thirty days of the decision being issued. The Media Appeals Board should consist of three members of international distinction. The Chairperson should be a sitting or retired judge or senior human rights lawyer. Another should be a journalist or media professional. They shall be appointed by the Interim Authority or its delegate or successor. All decisions should be delivered in writing and should be considered as final and binding. Sanctioning decisions that have been upheld in appeal should be enforced by the law enforcement agencies.

Summary of Complaints Process

Having described the roles and functions of the various departments and bodies of the IMC for ease of understanding it is probably appropriate to summarize the complaints and enforcement process. The DG would in effect be recipient of all complaints and allegations of violations of professional ethics or the Interim Media Law. The DG would then refer all these cases in the first instance to the Press and Broadcast Council who would investigate with the assistance of the Complaints and Monitoring department. The Press and Broadcast Council would then attempt to resolve the dispute through mediation or arbitration and if this could not be achieved the complaint would be referred back to the DG who would then decide whether to elevate the complaint for formal administrative consideration. If he decides to proceed he would refer the complaint to the Hearings Panel, which would take testimony and hear the case in an open and public hearing. They would then decide whether the complaint constituted a violation and would make recommendations to the Governing Council in writing concerning mitigating and aggravating circumstances. The Governing Council would then decide on appropriate sanctions in accordance with the interim law. The decision of the governing Council would be issued in writing and from the date its promulgation the defendant would have thirty days in which to exercise their statutory right to appeal to the Media Appeals Board. The Media Appeals Board would then convene and hear the appeal in an open hearing and, on completion, would issue a binding final decision in writing.

Conclusion

This transition strategy has been drafted in order to present a plan that will manage the process of transforming the Iraqi media landscape from where it is now to where it should be: one that conforms in all respects with international standards of practice. Its specific aim is to create a framework that empowers journalists and the media rather than restricting them and that enables both the press and the broadcast media as well as the general public to exercise their rights to freedom of expression to the maximum degree in

accordance with the vision laid down in article 19 of the International Covenant on Civil and Political Rights.

The central element of the strategy is the establishment of an Interim Media Commission (IMC) that would take over the role of the abolished Ministry of Information in the media sphere and assume responsibility for media development. The IMC would be subsequently subsumed into a new independent regulatory authority that would be established through the parliamentary process once free and fair elections have taken place. The second major element of the strategy is creation of a Press and Broadcast Council, an all-Iraqi body to consider and set professional standards, to hear and if possible resolve complaints against media, and to take the lead in education of journalists, government and the public about free media. The Council would give a strong voice to Iraq journalists in the development of independent, pluralistic media.

Finally, the '*sine qua non*' for the development of democracy, and for holding free and fair elections in particular, is open and rigorous public debate. This can only be achieved when the public has unfettered and universal access to a vigorous, free, open and independent media which encourages this debate in an impartial and intelligent way. This paper has articulated a possible strategy for how this might be achieved through the development of an enabling legal framework, a system of broadcast regulation, the transformation of State media to public service media and through an extensive public education and awareness campaign.

11. Internet Policy Guidance for Iraq

The Internet — architecturally open and decentralized, abundant, inexpensive and user-controlled — is a new communications medium ideally suited for the promotion of open, democratic societies and is increasingly central to economic growth and human development worldwide. The Internet shares characteristics with other mass media, but it is unlike any of them in its totality. Law and policy that are focused upon mass

communications media needs to address the Internet as one such medium, and an increasingly important one.

The Internet among other things allows anyone to become a publisher by virtue of being able to create a web site or any other server of content. The Internet is now an important medium in developed countries for journalists of all kinds. Indeed, many newspapers and magazines now have web sites on which up-to-the-minute content is maintained, and the physical form of their publication is becoming to a significant extent a series of snapshots of the material that is available on their web sites.

The Internet is not independent of the legal and regulatory framework of individual countries. To the contrary, laws and public policies can hinder or promote the development of the Internet. Government regulation can quash Internet growth. On the other hand, the lack of clear laws can result in an environment where government officials arbitrarily and inconsistently decide what is permitted and what is forbidden, leaving Internet service providers, Web site operators and others subject to licensing and other controls with no hope of legal recourse. Journalists who regard the web as an attractive publications medium are then at risk of seemingly arbitrary actions against them.

Internet policy needs to understand and take advantage of those attributes that make the Internet unique while not unnecessarily impeding its effectiveness:

- It is a global medium; it does not necessarily respect national borders
- It flourishes, based upon open standards and open access
- It is decentralized; there are no gatekeepers
- It is abundant; the barriers to entry are low, and for most transmission methods, there is no scarce spectrum
- It is inexpensive; everyone can be a publisher of information and a provider of information services
- It is by and large user-controlled – such as decisions to encrypt or to filter

- It is interactive, and the interaction can be 1-to-1, 1-to-many, or many-to-many

The needs of Iraq with respect to Internet policy at the present time are moderately straightforward but nevertheless important. The current state of affairs in Iraq may well not permit any formal policies or regulations to be promulgated — indeed, it does not yet have the administrative or legislative apparatus to construct or enforce them — so one must focus upon principles that set the right directions for the future.

In addition, it is premature for a country like Iraq, with scarce Internet deployment, deficient computer proliferation, destroyed PTT infrastructure and most importantly a vast majority of its population with meager buying power and no access to training and education facilities, to consider any comprehensive approach to Internet policy. Today Iraq needs computer and Internet literacy workshops to develop some capacity building expertise within the country as much as it needs policy attention. E-commerce and e-government will come later; they will grow in parallel with the natural build up of a critical mass of Internet users within Iraq. It may take the Iraqi trained diaspora several years to venture back to Iraq and start making a difference, assuming that peace and some sort of a democracy would prevail.

The enablement of the Internet in Iraq at this time is as much of a development issue as it is a policy issue. Initial policy guidance should set the basis for the evolution of a policy environment that will facilitate rapid growth and exploitation of the Internet. Subsequent to that, the growth of the Internet will be facilitated more by investment in physical infrastructure and multi-user access points, in generating useful local content and services using the web, and in investing both in the technical skills of Iraqis to extend the net and in Internet use skills of many more Iraqis so that they can exploit its content and services. Journalists in particular should find the web an appealing publications medium as the Internet and its user population grow.

Following are a set of issues that we believe are important and that should be considered in guiding policy with respect to the Internet and the mass media's use of it in

the immediate future. The first group of recommendations relates to extending the affordable Internet through facilitating the growth and prosperity of the Internet industry:

1. The government should facilitate the availability of affordable Internet services to as many of its residents as possible. Helping an Iraqi Internet industry to emerge and be healthy is an important part of the reconstruction of the media environment in Iraq. In particular, the country will need a set of entrepreneurs who will become Internet service providers (ISPs) as quickly as possible. ISPs serve as intermediary organizations between end users, both individuals and organizations, and the global Internet, and their success is essential to the success of the Internet in Iraq. Government policy needs to encourage these entrepreneurs by assisting them to start their business quickly and easily, and to offer service on a competitive basis to all potential subscribers.
2. Licensing and registration requirements should be predictable and consistent and should neither impede competition nor be used as a means of restricting market entry. The marketplace and ordinary business law are sufficient to protect consumers. ISPs should be able to offer Internet services without prior approval. Licensing should be kept to an absolute minimum necessary for essential government operation, and the preferred position is that ISPs should be treated no differently than other businesses with regard to establishing a business. The reasons for licensing are substantially outweighed by the reasons not to license. Licensing may confer rights, but it also is likely to confer obligations and delays that are barriers to entry.
3. Internet legislation and policy needs to distinguish between carriage and content. In particular, ISPs should be regarded as providing carriage for information, and that function should incur no legal liability imposed by the content that is carried. Of course, an ISP may also be a supplier of content, and that content should be subject to policy regarding content. However, ISPs should not be liable for any aspect of the content which they transmit in their function of providing data carriage.

4. The Internet industry in Iraq should be encouraged to establish at an early stage an Internet exchange point (IXP). An IXP allows traffic local to Iraq to stay in Iraq without having to enter the global Internet and be routed through another country, most often through the United States or Europe. In spite of the fact that this seems like a simple and economical concept, IXPs have often been late in materializing in developing countries. An IXP can be created by the set of ISPs in a country; it can also be an independent entity, and it can even be offered by a long haul Internet provider as a service at the point of termination of the international connection. Regardless of how it is implemented, an IXP should allow the interconnection of any ISP that wishes to connect to it, as well as any international Internet carrier that wishes to offer internal connectivity to Iraqi ISPs. There should be no barriers to entry to the IXP beyond technical competence, existence of the interface equipment, and the costs associated with providing the service.

Several of our recommendations relate to content:

5. There is content on the Internet, specifically pornographic content, which is likely to be objectionable to the majority of Iraqi residents. To the extent that filtering of such material is needed, ISPs should be required to provide, upon request by the end user, filtering software for client machines, or equivalent filtering services at the server level. Pornographic content needs to be defined as best it can to provide a basis for court challenges. There should be provisions in the law allowing individuals to challenge the blocking of certain sites, so that errors in the blocking system can be corrected.
6. The Internet industry is increasingly an information economy. Forms of information that can be put into digital form and transmitted digitally over any data network including the Internet include texts, software, music, images, animation, and movies. Much of that information is protected by copyright, and has specific conditions attached to its reproduction, transmission, and distribution. Those intellectual property rights shall be respected as shall be the case for other media.

7. Content suppliers, including web services, file services, and data base services, should not be licensed just because they reside on electronic media. In particular neither web sites nor their content, which are the both the repository of much formal and informal content and which are also a primary environment for innovation of new electronic goods and services, should be licenses just because they reside in electronic media. To do otherwise would have a chilling effect upon the suppliers of content and could substantially reduce the amount of useful information available to the population.

The growth and affordability of the Internet still depend critically on the fixed line voice telephone infrastructure, both for dial-up local loops and for high speed longer distance transmission circuits:

8. The growth of the Internet depends critically upon having an efficient voice telecommunications system. Good telecommunications policy is so much a prerequisite to effective Internet use that one should consider the two subjects together. Some of the principles of an effective telecommunications and Internet policy are:
 - Privatization of governmental PTTs; internationally, telecomm policy favors such privatization actions
 - Competition: Competition can drive down prices, promote investment and spur the deployment of affordable services. Existing networks should be open to competitors.
 - International standard: full and fair competition in local exchange service, leased lines, long distance, and backbone; among wire line, wireless, and cable; and among ISPs.

- Non-discrimination: ISPs should have access to network facilities on same terms telecomm companies offer their own ISP affiliates.
- Goods and services should be open to foreign competition; trade barriers should be low. EU directives and WTO agreements support this principle.

It is essential that competitive principles be embodied in the reconstruction of the telephone infrastructure. No actions should be taken, especially in terms of license terms granted, that would deny eventual competition at any level of the telephone system, fixed line or cellular, or would restrict it in any way unconnected with rational resource allocation. Exclusivity of service should be avoided. Given a chance, competitive services will soon emerge and play their part in making access affordable. No barriers should be placed in their way.

9. Electronic infrastructure must be made available on a non-discriminatory basis. ISPs (Internet Service Providers) should be able to obtain circuits in the same manner as any other consumer, especially higher speed leased lines that will be essentially for a robust Internet infrastructure as business and government begin to use the network heavily. If a voice carrier also offers network services, transactions between the parent and subsidiary of the voice carrier must be at arms length, and on a basis consistent with its dealings with competitive network services.
10. In reconstructing the governmental structure, provision should be made at the outset for an independent regulatory authority for broadcast media, voice telephony, and other services requiring public intervention in markets. No such authority is initially needed for the Internet, but effective Internet deployment and use depends upon a competitive market for communications services, which an independent regulator should be capable of providing.

Finally, later stage developments such as e-commerce and e-government need to be anticipated, as they are powerful drivers of both economic growth and democratic

processes. The last recommendation provides a start in facilitating the emergence of these applications.

11. E-commerce should be anticipated by ensuring that the new civil code includes a statement that no document shall be denied legal effect solely because it is in electronic form. In the beginning it may be sufficient to declare that there should be no legal prejudice against documents just because they are in electronic form. Such a statement legitimizes the use of e-documents, and paves the way for an expansion of their use, and consequently a deepening and refinement of the policy issues surrounding them.

INTERIM MEDIA LAW

A Law to Promote, Protect and Regulate Free, Independent, Pluralistic Media During the Transition to Democracy

PREAMBLE

The purpose of this law shall be to guarantee, promote and protect free, independent and pluralistic media in Iraq. All entities established under this law shall operate in accordance with democratic principles embodied in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination; with respect for the culture and history of Iraq; and in recognition of the political and social problems inherent in the transition from repression to democracy.

The immediate goal is to provide an interim framework to facilitate the building of permanent legal foundations to enable and protect free media while providing a legal and ethical system to promote professionalism and hold media accountable for their actions through fair and independent proceedings. To those ends, this law creates a regulatory structure with a strong role for Iraqi journalists in writing, adopting and implementing codes of professional conduct, and with provisions for the role of journalists to increase as the need for international regulation diminishes.

To take, investigate, hear and resolve complaints of legal and ethical misconduct by journalists of all media, this law creates a Press and Broadcast Council, an Interim Media Commission, and a Media Appeals Board. The law suggests model codes of conduct for broadcast and print journalists, applicable also to journalists publishing over the Internet or through other media, which shall be considered, amended and adopted by the Council.

The law provides articles covering legal offenses: civil defamation, incitement to violence, and invasion of privacy, and provides sanctions for the violation of those articles. The law provides that journalists shall have access to information produced and held by the Interim Authority and the Iraqi government, and to the decision-making process of both, with clearly defined exceptions and an appellate process to resolve disputes. The law provides internationally recognized protections for journalists, including protection of source confidentiality and privilege.

Under this Interim Media Law, all print media shall be self-regulating. No license shall be required for publication of newspapers, magazines or other print organs. No license shall be required of any individual practicing journalism. Regulation of broadcast media shall be minimal; this law establishes a system for allocation of frequencies, with clear criteria for their allocation and a system of regulation that commences with the Council.

This law shall remain in force until replaced by Iraqi Constitutional process.

SECTION 1

International and Regional Standards

1.1 This law adopts and incorporates international and regional standards and principles of democratic media law as stated in human rights instruments. Specifically, this law incorporates the principles and limits on restrictions on freedom of media expressed in Article 19 of the International Covenant on Civil and Political Rights, to which Iraq is a signatory:

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a. for respect of the rights and reputations of others;
- b. for the protection of national security or of the public order (*ordre public*) or of public health or morals.

SECTION 2

The Ministry of Information.

2.1 The Ministry of Information is abolished.

SECTION 3

Interim Media Commission

3.1 The Interim Media Commission is established to be an independent regulatory agency responsible for the development and promotion of an independent and professional media in Iraq. The Interim Media Commission shall be independent in the performance of its responsibilities, which shall include:

- (1) Allocating broadcast frequencies and managing the broadcast frequency spectrum as part of a larger mandate to facilitate the emergence of a commercial broadcast sector.
- (2) Managing the transformation of state broadcasting to public service broadcasting.

- (3) Taking into trust other media entities and privatizing or disposing of them in fair and transparent manner.
- (4) Establishing and working with a Press and Broadcast Council to hear and resolve ethical and legal complaints of journalistic wrongdoing.
- (5) Taking, investigating, hearing and resolving ethics complaints appealed from or passed on by the Press and Broadcast Council.
- (6) Resolving legal complaints of defamation, incitement to violence, hate speech and invasion of privacy.
- (7) Managing the establishment of long-term regulatory and legal structures to promote and protect free and responsible media, for eventual presentation to Parliament.

3.2 The Interim Media Commission shall consist of a chairperson, a vice chairperson and five members appointed by the Interim Administrator.

- (1) The chairperson shall be an eminent and senior Iraqi media professional or human rights advocate.
- (2) The vice chairperson shall be an international professional of similar background and status.
- (3) No member shall hold another elective or appointive office.

3.3 Rules for terms of appointment and the staggering of terms shall be established by the Interim Administration upon recommendation of the Director General.

3.4 Upon appointment the Interim Media Commission shall select a Director General, except in the instance of the first Director General, who may be appointed by the Interim Administration.

3.5 The Interim Media Commission shall have staff including legal counsel and international advisers for various departments.

3.6 The Commission shall have regional offices as required.

3.7 The Commission shall establish a Hearings Panel that will consider complaints referred by the Director General and shall set procedures necessary for the consideration and resolution of such complaints under international standards.

3.8 The Commission shall give written notice of any sanction imposed as a result of a complaint and provide a reasonable opportunity for reply prior to the imposition of any sanction.

3.9 The Commission may request the assistance of the relevant law enforcement authorities in Iraq and appropriate public officials in the enforcement of an imposed sanction.

SECTION 4

Print Media

4.1. Print media, including newspapers, magazines, newsletters and other publications shall be self-regulating except in the case of defamation, incitement to violence and laws of general application.

4.2 No license shall be required to publish a newspaper, magazine, newsletter or other publication.

4.3 Publications subject to a complaint may voluntarily accept the jurisdiction of the Press and Broadcast Council or, in complaints of defamation or incitement to violence pursuant to Sections 8 and 9, shall be subject to the jurisdiction of the Commission.

4.4 The Interim Media Commission shall have the authority to file an original complaint against any publication or journalist with the Press and Broadcast Council.

Any appeal of Council action on a complaint filed by the Commission shall be made directly to the Media Appeals Board.

SECTION 5

Broadcast Media

5.1 Radio and television operators shall not broadcast in Iraq without a broadcast license issued by the Interim Media Commission.

5.2 Applications by radio and television operators for a broadcast license shall be made to the Interim Media Commission in accordance with the procedures set out by the Commission. Applicants for a broadcast license shall agree to abide by the Broadcast Code of Conduct issued by the Press and Broadcast Council.

5.3 The Interim Media Commission shall set standards and criteria for allocating frequencies through licenses. The process of adopting standards shall be public and transparent and the Commission shall seek the advice and counsel of the Press and Broadcast Council in setting the standards. The Commission shall evaluate applications for broadcast licenses in accordance with the standards and criteria and taking into account the public interest. . Frequencies shall be allocated with concern for diversity and plurality to ensure that all segments of society have access to broadcast media. If a broadcast license is denied, Commission shall include an explanation of the grounds upon which the license was denied. Applicants denied a license shall have the right to appeal the denial to the Media Appeals Board. The Commission shall issue broadcast licenses only to entities in which majority ownership and control resides with Iraqi citizenship.

5.4 The Interim Media Commission shall work with the Press and Broadcast Council to pass and enforce a code of professional conduct for broadcast media.

5.5 Complaints of ethical or legal violations by broadcast media shall be filed with the Director General and considered originally by the Press and Broadcast Council pursuant to provisions of Section 6. Where the Council determines that it cannot resolved a case through arbitration and mediation, it shall return the complaint to the Director General, who may refer it to the Hearings Panel.

5.6 The Interim Media Commission may impose one or more of the following sanctions on broadcast licensees who fail to adhere to the Broadcast Code of Conduct. Sanctions imposed must be proportionate to the offense. These may be in addition to penalties provided in articles on defamation, incitement and other legal articles:

- (1) The requirement to broadcast a correction or apology;
- (2) A requirement to compensate a complainant for damages suffered as a result of the broadcaster's misconduct;
- (3) A warning;
- (4) Suspension of the broadcast license;
- (5) Denial of entry into premises;
- (6) Seizure of equipment;
- (7) Close down of broadcast operations; or
- (8) Termination of the broadcast license.

5.7 The sanctions referred to in subsections (5), (6), (7) and (8) may be imposed by the Interim Media Commission on a radio or television operator who is broadcasting without a broadcast license as well as licensees who fail to adhere to the terms of the Broadcast Code of Conduct.

5.8 The Commission shall determine whether entities providing multi-channel video services shall be franchised or otherwise licensed with respect to technical standards, channel service carriage, and such other provisions as are consistent with the principles of Section 5.3.

SECTION 6

Press and Broadcast Council

6.1 The Press and Broadcast Council (The “Council”) is hereby established.

6.2 The Council shall be an independent body who shall write, adopt and administer codes of ethics and professional conduct for print and broadcast journalists, have responsibility for developing professionalism through training and education, shall advocate for media freedom and independence, shall counsel and advise the Interim Media Commission on broadcast licensing and other matters, and shall work with and encourage journalists’ associations.

6.3 The Council shall consist of seven members appointed by the Interim Media Commission on recommendations by the Director General.

6.4 The Council shall have original jurisdiction over all complaints on reference from the Director General, except as provided in 4.3.

6.5 The Council shall have sufficient staff to investigate complaints. Council shall receive legal advice from attorneys for the Interim Media Commission.

6.6 In all complaints, the Council determine the facts and attempt to resolve the complaint through mediation and arbitration.

6.7 Should mediation and arbitration not produce a resolution, the Council may hear testimony and take evidence and reach a resolution based on a majority decision as to the best course.

6.8 The Council may dismiss a complaint, issue a finding and conclusion without sanctions, or take action including the imposition of the following sanctions:

- (1) A requirement that a news organization or journalist found to be at fault publish or broadcast a correction and/or apology.
- (2) A requirement that an organization found to be at fault publish or broadcast the Council’s report of its findings.

- (3) A reference to the commendation that the Commission take the complaint as a serious violation of ethics or professional code that could result in any sanction under Section 5.6, or as a violation of one of Section 8 or Section 9. The Council's recommendation shall be advisory and shall not prejudice the Commission's investigation and findings.

6.9 The Council shall hold hearings on the question of foreign ownership of print publications.

6.9 The Council shall set procedures for handling complaints compatible with these articles and subject to acceptance by the Interim Media Commission.

6.10 The imposition of any sanctions by the Press and Broadcast Council shall be without prejudice to any applicable legal actions brought against a broadcaster before the Interim Media Commission.

SECTION 7

Media Appeals Board

7.1 The Media Appeals Board (hereinafter called "the Board") is hereby established.

7.2 The Board is an independent body which shall hear and decide on appeals by a person or an entity against any of the following decisions by the Interim Media Commission or by the Press and Broadcast Council:

- (1) Refusal to issue a broadcast license;
- (2) The condition(s) attached to a broadcast license; or
- (3) Sanctions imposed by the Commissioner
- (4) Sanctions imposed by the Press and Broadcast Council not appealed to the Interim Media Commissioner.

7.3 Appeals against any of the above decisions shall be made to the Board within 30 days of the issuance of such decision. The Appeal shall be made in writing and may be accompanied by such documentation or other evidence as the appellant wishes to present.

7.4 The Board shall be composed of three members of international distinction appointed by the Interim Authority, who shall designate one member as President of the Board.

7.5 The Board may uphold, modify, or rescind any condition or sanction imposed by the Commission or any refusal by the Commission to issue a license. The Board shall state the reasons for its decision. A decision of the Commission shall remain in effect until the Board has issued a final decision modifying or rescinding the decision by the Temporary Media Commissioner.

7.6 The Board shall determine its own rules of procedure, which rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decisions of the Board. The said rules of procedure shall be adopted at the first meeting of the Board.

7.7 Final decisions of the Board are binding and enforceable.

SECTION 8

Actions of Law: Defamation

8.1 Individuals, legally established businesses and other legal entities who believe they have been defamed by published or broadcast statements have the right to take legal action against the organization or journalist they believe defamed them. Consideration and resolution of complaints of defamation shall follow international standards. The following parties do not have standing to file a defamation action:

(1) Government agencies.

(2) Government officials in their official capacity.’

- (3) Persons claiming an offense on behalf of another party; for instance, the state or nation, an institution, a group that is not a legal entity with the right to sue and obligation to defend itself against suit, a family (though individual members can be defamed), a deceased person, a patriotic or religious object.
- (4) Persons or parties allegedly protecting an interest other than their own reputation; for instance, public order, national security or the honor of an institution, group or religion.

8.2 A defamation complaint shall be filed first with the Press and Broadcast Council, which shall investigate the merits of the complaint and attempt to negotiate a resolution that may include agreement by the journalist or news medium to correct any false information published and/or apologize.

8.3 If the Council finds merit to the complaint but is unable to negotiate a resolution acceptable to both parties, the Council shall pass the case to the Interim Media Commission, which may dismiss the claim or hear it and reach a resolution.

8.4 To be found actionable, a statement must be made publicly (to a “3rd party”); the complainant must be identified or identifiable; the statement must be defamatory in common legal usage of the term (tending to lower the complainant in the esteem of others); the statement must be false; there must be injury; and the party who published the statement must have been at fault.

- (1) In the case of private complainants the fault shown must be negligence.
- (2) In the case of public officials, public figures and all parties when the statement is published in a matter of public interest, the fault shown must be malice. To prove malice, the complainant must present convincing evidence that the alleged defamer knew that the statement was false, or recklessly disregarded clear indications of falsity, and published nonetheless.
- (3) No finding of liability shall issue for mistakes made innocently, in good faith or without fault.

8.5 The following shall be defenses to complaints of defamation:

- (1) Truth. No liability shall be found for truth, no matter how defamatory. The burden is on the complainant to prove falsity.
- (2) Good faith. A defendant may show that he or she acted followed accepted standards of professionalism and believed the matter published was true.
- (3) Opinion. No opinion shall be the basis of liability, even insulting or offensive ones. The factual basis of the opinion may be the basis of liability if false.
- (4) Privilege. No report shall be liable if it is an accurate account of statements made by government officials and agents, including police and those in the judiciary, in the course of their work.
- (5) Statute of limitations. A complaint of defamation must be brought within six months of publication.

8.6 Sanctions for a finding of liability may include the following:

- (1) A requirement that the false information be corrected.
- (2) Compensation for actual damages, defined as provable losses as a result of the defamatory publication.
- (4) Compensation for non-material harm to reputation in serious cases.

8.7 Journalists shall not be required to reveal sources of information to whom they have promised confidentiality. The burden shall be on the complainant to prove that information attributed to an unidentified source was false.

8.8 A newspaper or other news medium may be liable for republication of defamatory statements published or broadcast by another.

8.9 Internet Service Providers, printers, distributors, news agents and vendors shall not be liable for defamatory statements except where they have had actively aggravated the publication.

SECTION 9

Actions of Law: Hate Speech and Incitement to Violence

9.1 It shall be an offense to publish, broadcast or otherwise disseminate statements that threaten, insult, ridicule or otherwise abuse a person or group with language that is intended to, and does or may provably incite others to commit acts of violence or to discriminate against that person or group, or is published, broadcast or otherwise disseminated in reckless disregard of the probability that it may incite such violence or discrimination.

9.2 In all cases, a nexus must be established between the words and an actual or probable act of violence or discrimination. Language that is merely offensive or insulting may not be subjected to liability under this Section. Language that is followed by an act of violence or discrimination that was not intended or could not reasonably have been foreseen shall not be the basis of liability under this Section.

9.3 Complaints of such offensive language shall be made to the Press and Broadcast Council, which shall investigate the merits of the complaint and attempt to resolve the matter through mediation and negotiation.

9.4 If the Council finds merit to the complaint but is unable to negotiate a resolution acceptable to both parties, the Council shall refer the case to the Commission, which may dismiss the claim or hear it and reach a resolution.

9.5 Sanctions for a finding of liability under this Section may include:

- (1) The requirement to publish or broadcast a correction or apology.
- (2) Compensation for actual damages.
- (3) A punitive fine.

- (4) A warning;
- (5) Suspension of the broadcast license;
- (6) Denial of entry into premises;
- (7) Seizure of equipment;
- (8) Closedown of broadcast operations; or
- (9) Termination of the broadcast license.
- (10) In the case of print publications found to have violated this section with intent or reckless disregard, where the damage is serious, the publication may be ordered to cease publication and all equipment may be seized.

9.6 In serious cases where malicious intent or recklessness is shown and damage is serious, a prison term of up five years may be imposed with approval of the Interim Authority. Malice may be defined in this section as intent to arouse hatred or discrimination because of religious, ethnic, gender or other reason recognized as discriminatory.

SECTION 10

Open Government Laws

10.1 Freedom of information policies are essential to buttress freedom of the media and the rights of citizens. The Commission shall, in consultation with the Interim Authority and institutions of civil administration in Iraq, prepare such legislation as is necessary to establish that all information produced or held by government agencies, and all meetings at which governmental decisions are taken, including court proceedings, are open and available to journalists and the public, with narrowly drawn exceptions that can be appealed to higher authority.

10.2 A government official who believes information or access falls within an exception allowing non-disclosure or access must inform the journalist why access is being denied and under what exception he believes it falls.

10.3 A journalist may appeal the denial to the Hearings Board of the Interim Media Commission, which may uphold or overturn the denial. Either party may appeal the denial to the Media Appeals Board and ultimately to a designated board or panel or individual of the Interim Authority.

10.4 Exceptions to the general policy of openness include privacy of citizens or government employs, integrity of police investigations, national security, health and public order. These broad categories shall be narrowly defined by a panel or group that includes representatives of the Press and Broadcast Council, the Interim Media Commission, the Interim Authority and the Iraqi government.

SECTION 11

Election Provisions

The Commission shall determine, in consultation with emerging political parties and candidates, regulations as are necessary to assure broad and fair dissemination of information and competing points of view by candidates and parties as part of election processes. The Commission may call on bodies of international expertise to provide assistance in this process.

SECTION 12

As copyright and other intellectual property laws are developed the Commission shall advocate provisions and standards that facilitate freedom of information.

SECTION 13

The Commission, in consultation with the Council, shall consider and adopt principles of journalists' privilege, or immunity from legal liability. Issues to be considered shall include

- a) Information that is contained in the government communications, court decisions or other official documents or other statements made by government officials in the course of their duties.
- b) Information constitute literally and unchanged reproduction of materials supplied by an information agency;
- c) Information is contained in an official reply to the request for information or in the materials released by press services of state bodies, public organizations, or of the bodies of well known associations;
- d) Accurate reproduction or a good faith report of the extracts of speeches and public statements of members of the elected bodies of state power, or public speeches of the members of government and their deputies, of the highest officials of the state bodies and of the bodies of self-government, of the public associations highest officials and leaders of the political parties;
- e) Good faith reporting of the information and materials disseminated by other mass media that can be identified, made liable and brought to court on the territory of Iraq Republic for the violation of the Iraq Republic mass media legislation.

SECTION 14

The Commission, in consultation with the Council, is mandated to develop such guarantees against censorship as are necessary.

SECTION 15

The Commission shall take into trust and privatize state-owned infrastructure and technical support to the printing, production, broadcast and distribution of all media should be privatized. In the interim, as privatization progresses, firm policy should be established in law that they are available to all equally.

SECTION 16

Implementation

The Interim Authority may issue administrative directions in connection with the implementation of the present regulation.

SECTION 17

Applicable Law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

The Press and Broadcast Council is empowered to adopt a code or codes of professional and ethical conduct for journalists to follow. There may be separate codes for print and broadcast journalists, with provisions applying to journalists who report and comment through other media such as the Internet. Or there may be one Code, with provisions directed toward practitioners in particular media where necessary. Whichever, the principles embodied shall meet the highest international standards, worked by the Council into context of the Iraqi culture, traditions and history. The following is a model code the councils may consider.

Draft Code of Professional Conduct for Iraqi Journalists By the Press and Broadcast Council

1. International Standards

Iraqi journalists affirm their respect for the principles of freedom of expression and freedom of media of the Universal Declaration of Human Rights which include the following provisions:

Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

and

Article 29 1. "Everyone has duties to the community in which alone the free and full development of his personality is possible; 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.";

2. Consensus

These principles reflect the consensus of professionals in Iraq and internationally on ethical professional conduct.

3. Ethical Duties of Journalists

- a. Accuracy. Journalists recognize that their first duty is to serve the public's need to receive a free flow in information and comment from diverse sources that will enable them to find the truth for themselves.
 - i. Journalists should make conscientious efforts to verify rumors, assertions of fact and public accusations before reporting or commenting on them. Unverified rumors should not be reported unless it is made clear that they are merely rumors.
 - ii. Accuracy includes context. Journalists should understand that omissions of relevant facts or inclusion of irrelevant facts may skew and distort facts to the extent that the report is inaccurate.
 - iii. Accuracy includes fairness. Accusations should not be reported without response from the person or persons accused; if time does not allow response in a report, every effort should be made to get response as quickly as possible.
 - iv. If appropriate a person or representative of a group or interest accused or criticized should be given the opportunity to respond.
 - v. Inaccuracies should be corrected as soon as the inaccuracy is learned. Apologies for inaccuracies should be published or broadcast whenever appropriate.
 - vi. Accuracy includes impartiality in reporting. Commentary and opinion should always be clearly distinguished from reporting presented as objective and factual. Partisan commentary is an intrinsic part of freedom of expression and media but presenting opinion as fact is a damaging form of inaccuracy and unethical.

- b. Respect for ethnic, cultural and religious diversity of the nation.
 - i. Reporting should be thorough, covering all relevant sides fairly and without prejudice.
 - ii. Commentary and opinion should attempt to be civil and polite, even on issues about which the commentary feels passionately.
 - iii. Journalists should not publish or broadcast material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.
 - iv. Journalists should not publish or broadcast material that encourages crime or criminal activities or that carries imminent, foreseeable risk of causing harm including death or injury, damage to property or other violence.
 - v. Journalists should not report or comment on the race, religion, ethnicity, sex or physical or mental illness or disability unless it is relevant to the news.
- c. Respect for the rights and freedoms of other people.
 - i. Journalists should respect the reputations of the people they report on. Reports and commentary may be critical, but the criticism should be based on accurate facts.
 - ii. Journalists should respect the privacy of the people they report on. Journalists should not invade the privacy of people unless there is an overbalancing public interest in the information.
 - 1. Public interest shall include the activities, finances, character and other aspects of public officials, public figures and others involved in newsworthy activities; that is, affecting element of the public.

- iii. Journalists should not attribute guilt to persons who have been charged with crimes until they are found guilty by a court. Criminal charges filed by police, and the actions and hearings of courts, are of significant public interest, but reporters must be careful in covering criminal proceedings not to prejudice a trial or prejudge a defendant.
- iv. Journalists shall respect the confidence of sources to whom they have promised confidentiality.
 - 1. However, journalists understand that the identity of sources is important information readers, views and listeners need to evaluate the truth or value of information or opinions offered and will make every effort to get information on the record.
 - 2. Journalists shall not attribute information or opinions to unidentified sources who are not real individuals who have been interviewed.
- d. Respect for the credibility and integrity of journalism.
 - i. Journalists should understand that freedom to report and comment can and will result in the publication of information or opinions others find offensive. While free to disagree, they must respect that the right of others to express views they dislike is exactly the right that allows them freedom to express themselves freely. It is unethical to call for the silencing of others.
 - ii. Journalists should not use their access to inside information for their own profit. They should never take gifts or money for reporting or not reporting information. Journalists should understand that they have a duty to other journalists, as well as to themselves and their organization, to act credibly and honestly.

THE COMMISSION SHALL RECOMMEND A LAW FOR RECOMMENDATION BY THE INTERIM AUTHORITY AUTHORIZING AND DETAILING THE CONVERSION OF STATE-OWNED BROADCAST MEDIA TO PUBLIC SERVICE RADIO AND TELEVISION. THE FOLLOWING MODEL LAW DRAFTED BY THE EUROPEAN INSTITUTE FOR THE MEDIA FOR THE EUROPEAN BROADCASTING UNION, PROVIDES A POSSIBLE FRAMEWORK.

MODEL PUBLIC SERVICE BROADCASTING LAW

Article 1 - Name, Legal Personality, Seat

§1 The existing national broadcasting organization "....." is hereby transformed into an independent non-profit public service broadcasting organization with the right to self administration. It shall adopt internal Statutes and Bye-laws in accordance with the provisions of this Law.

§2 The name of the new organization shall be "....." (hereinafter referred to as "PSBO").

§3 The seat of PSBO shall be at

§4 PSBO shall establish and operate regional studios in (at least) the following cities:
.....

Article 2 - Objectives of PSBO, Scope of Activity

§1 The function of PSBO shall be to provide a radio/TV program service in the public interest.

§2 PSBO shall provide:

(a) (number of) national radio services

(b) the following local/regional radio services: (details)

- (c) (number of) national TV services
- (d) the following local/regional TV services: (details)
- (e) an international/foreign language radio and/or TV service (details)

§3 The necessary terrestrial transmitter networks are operated by the National Telecommunications Organization. Coverage of the entire population within the geographical area for which the program service is intended shall be sought as far as possible. The costs for the broadcast transmission services provided by the National Telecommunications Organization are borne by the State, as part of the telecommunications budget.

[Alternative:

§3 The Telecommunications Authority shall make available the necessary frequencies for terrestrial transmission of the above-mentioned program services. PSBO may operate its own transmitter networks. It may also assign this function to a separate entity. Coverage of the entire population within the geographical area for which the program services are intended shall be sought as far as possible.]

§4 PSBO shall also be entitled to transmit programs via satellite, cable or any other technical means. It may provide teletext services and engage in any new field of broadcasting technology or service in the widest sense of the term.

§5 Cable distribution organizations shall be obliged to distribute, free of any charge and with priority ranking vis-à-vis any other channels, all PSBO program channels and services which are legally destined for reception in their area of operation and are receivable off air.

- §6 Providers of digital television bouquets shall be obliged, upon request, to include PSBO program channels and services, also supplying, at cost, the necessary conditional access services.
- §7 PSBO shall be entitled to have its program offer displayed prominently and readily accessible on electronic program guides. Where PSBO chooses to provide an electronic program guide of its own to present its programming, it shall be entitled to have the guide distributed, where technically feasible, on any platform or communications system where its channels are offered to the public.
- §8 PSBO may publish and distribute any printed matter related to its programming or to questions of broadcasting in general.
- §9 PSBO may exploit its archive material in any possible manner, within or outside the field of broadcasting.
- §10 Subject to the approval of the Broadcasting Council, PSBO may provide additional program services, regardless of the method of delivery (e.g. on-line) or the mode of funding (e.g. pay-TV). It may collaborate with third parties, or acquire participation therein, for the purpose of providing additional or complementary program services.
- §11 Subject to the approval of the Administrative Council, PSBO may establish subsidiaries and/or acquire interests in commercial or non-profit entities whose activities are related to the functions of the Corporation, particularly in the fields of program production, exploitation and distribution.

Article 3 - Programming

- §1 PSBO shall provide varied and balanced programming for all sections of the population, including a fair share of programs catering for special/minority

- interests. Programming shall include information, entertainment and education/advice. It shall meet high professional quality standards.
- §2 Programming shall serve the public interest. It shall contribute actively to the public's free and informed opinion-forming and, as such, constitute an important element of the democratic process.
- §3 PSBO's overall programming shall reflect, as comprehensively as possible, the range of existing opinions and of political, philosophical, religious, scientific and artistic trends. It shall not unilaterally serve one party or group, association, vested interest, religion or ideology.
- §4 Programming shall have regard to the regional structure of the country. As far as possible, it shall reflect and promote the national culture in all its variety and richness, whilst also increasing the public's knowledge and understanding of foreign – and especially other European - cultures.
- §5 Programming shall respect human dignity and the fundamental rights of others. In particular, it shall not:
- (a) include programs which might seriously impair the physical, mental or moral development of minors, especially programs that involve pornography or gratuitous violence;
 - (b) include programs which might *otherwise* impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts, provided, furthermore, that where any such programs are broadcast in un-encoded form they shall be preceded by an acoustic warning or be identified by the presence of a visual symbol throughout their duration;

- (c) contain any incitement to hatred on grounds of race, sex, religion or nationality.
- §6 Programming shall contribute to the respect of the opinions and beliefs of others.
- §7 Programming shall further international understanding and the public's sense of peace and social justice, defend democratic freedoms, serve the protection of the environment, contribute to the realization of equal treatment between men and women, and be committed to truth.
- §8 News shall be comprehensive, unbiased, independent and correct. Before dissemination, information material must be examined, with reasonable care according to circumstances, as to its content, origin and truth. Commentary shall be clearly distinguished from news.
- §9 It shall be forbidden to exert any kind of physical or mental pressure or intimidation vis-à-vis PSBO or its staff which might prevent them from carrying out their duties in an independent and objective manner.

Article 4 - Access to information, confidentiality of journalistic sources

- §1 PSBO shall be entitled to transmit parliamentary debates.
- §2 PSBO shall have access to archives, documents and information held by public authorities. Access to official information can be denied only on the grounds of overriding public or private interests, particularly as regards national security and protection of privacy.
- §3 PSBO shall have reasonable free access to cultural, sporting and other events which are accessible to the general public and of general informational interest,

for the purpose of producing and transmitting brief television news reports. Such reports, which may be transmitted without any payment, shall not exceed the duration necessary to inform about the event in terms of news.

§4 PSBO shall be entitled to quote in its regularly scheduled television news programs from transmissions by other broadcasters of events mentioned in §3 above. Such quotations may be transmitted free of charge. Their duration shall not exceed 90 seconds. The source of the quotation shall be duly indicated.

§5 To prevent more or less large sections of the national population being precluded from watching important major events on free television, broadcasters whose programs are *de facto* not available to virtually every national TV household shall not be entitled to acquire exclusive TV rights to the following events:

- Olympic Games
- World and continental/regional Football Championships
- World and continental/regional Athletics Championships
- Any other world and continental/regional Championships taking place in ... (the country of PSBO)
- Matches of the national football team
- Continental/regional football cup competition matches involving a team of ... (the country of PSBO)
- ... (any other events of particular interest to the national audience)

Transmission of these events shall be live, except where for particular reasons (such as where an event takes place in a different time zone) the interests of the audience are better served by a deferred transmission.

§6 Cable distribution of foreign programs which would result in a *de facto* circumvention of §5 above shall be prohibited. Cases of violation shall be subject to a fine, per hour of violation, of at least

§7 PSBO shall have free access to, and be entitled to make radio reports on, events of the type mentioned in §3 above, without payment of any remuneration.

§8 The confidentiality of the sources of information (including material researched by journalists) shall be guaranteed by law. Disclosure can be required only in exceptional cases, on the basis of a court order, in the eventuality of an overriding public interest, e.g. the prevention of crimes against life.

Article 5 - Air-time for third parties

§1 PSBO shall grant free-air time to the Government, at the latter's request and as soon as feasible, for making official announcements. PSBO shall be free to offer a spokesman for the opposition the possibility of responding.

§2 Political parties shall be granted an appropriate amount of air-time during campaigns for national elections in which they participate. The same shall apply to candidates for the Presidency of the Republic. The Director General may refuse to transmit party political broadcasts if they do not serve the purpose of campaigning.

§3 Churches shall be granted appropriate air-time, at their request, for the transmission of masses and other religious services.

§4 Anyone granted air-time in accordance with §2 and §3 above shall bear sole responsibility for the content of the broadcast. Notwithstanding the foregoing, the Director General shall refuse the broadcast of programs whose content violates in an obvious and serious manner the applicable law.

§5 PSBO shall be entitled to request the reimbursement of its costs in connection with airtime granted in accordance with §2 and §3 above.

§6 Details shall be laid down in the PSBO's Bye-laws.

Article 6 - Right of Reply

§1 A natural or legal person who is affected by a statement of fact in a broadcast shall be entitled to a right of reply.

§2 The right of reply is excluded with regard to accurate reports on public sessions of legislative bodies and the courts.

§3 The reply must be restricted to the facts and may not have any criminal content. It must be presented in writing and signed by the party concerned or his legal representative.

§4 PSBO must broadcast the reply free of charge in such a way as to reach as soon as possible the public which has taken note of the contested factual statement (for example, in the next edition of the same program, or program category).

§5 PSBO may refuse to broadcast the reply if

(a) the person concerned has no legitimate interest in its dissemination,

(b) the reply is unreasonably long (for example, considerably longer than the contested factual statement),

(c) the request for a reply has not been received by PSBO within two months of the broadcast of the contested factual statement.

Article 7 - Rectifications, complaints or suggestions

§1 PSBO shall rectify false statements of fact.

§2 Everyone has the right to submit to PSBO objections and suggestions regarding programs.

Article 8 - Advertising, sponsorship, teleshopping

*As far as television is concerned, the definitions of "television advertising", "surreptitious advertising", "sponsorship" and "teleshopping" from Article 1 of the Television without Frontiers Directive (1997) and Article 2 of the Convention on Transfrontier Television (1998), should be introduced here, in addition to a transposition of the substantive clauses contained in Articles 10-20 of the Directive, and Articles 11-18(b) of the Convention. As regards possible variations and alternatives, as well as to the necessary adaptations for **radio**, see the Explanatory Comments on Article 8.*

Article 9 - European works, independent productions

As the case may be, the substantive provisions of Articles 4-6 of the Television without Frontiers Directive (1997), and Article 10(1) of the Convention on Transfrontier Television (1998), will need to be transposed here. For possible variations and alternatives, see the Explanatory Comments on Article 9.

Article 10 - The Organs of PSBO

The organs of PSBO shall be:

- the Broadcasting Council
- the Board of Administration
- the Director General.

Article 11 - The Broadcasting Council

- §1 The Broadcasting Council shall represent the interests of the general public with regard to programming.
- §2 The Broadcasting Council shall be composed of twelve members, coming as far as possible from different groups comprising the civil society.
- §3 The Council members shall be elected by (the Lower Chamber of) Parliament, with a three-quarters majority, following a public hearing with potential nominees.
- §4 Each member is appointed for a fixed period of six years. However, as regards the initial composition of the Council, four members shall be nominated for a period of two years, four members for a period of four years and four members for a period of six years.
- §5 The starting point for the initial periods shall be the date of the constituent meeting of the Council. Re-appointment of a member of the Council at the end of his or her term of office is possible.
- §6 Members of the Council may not belong to or work for the national government or the PSBO itself, or be members of parliament.
- §7 Members of the Council may not be revoked during their term of office. However, if for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Council meetings for a period exceeding six months, the member in question shall be revoked and be replaced by another person who shall finish the revoked member's remaining term of office. The provisions of §§3 and 6 above shall apply.

- §8 The Council shall elect its own Chairman.
- §9 The Council shall set up its own Rules of Procedure.
- §10 Except where otherwise provided herein, the Council shall take decisions on the basis of the majority of the votes of members present. Where voting is equal, the vote of the Chairman shall be decisive.
- §11 The Council shall meet at least once every two months. It shall also meet in extraordinary session whenever at least three of its members request a meeting.
- §12 The Director General and the Chairman of the Administrative Council shall be entitled to participate in Council meetings, except where the Council excludes them for particular reasons. Directors and other staff members or third parties may be invited to attend for particular reasons.
- §13 Members of the Council shall not receive financial remuneration for their work. However, they shall be entitled to a free radio and TV set and yearly global compensation for their expenses amounting to one half-month's salary of the Director General.

In addition, if they reside outside the city where the Council meetings take place, they shall be entitled to reimbursement of their reasonable travel and accommodation expenses.

- §14 The Broadcasting Council shall
- (a) appoint the Director General, with the vote of at least eight of its members in favor,

(b) approve the appointment of the Directors and the Editors-in-Chief for radio and for television proposed by the Director General. Unless at least six members of the Council vote against, or if no vote has been taken within three months of notification by the Director General, such appointments shall be taken as approved,

(c) appoint the members of the Administrative Council, with the vote of at least seven of its members in favor,

(d) adopt PSBO's Statutes, after consultation with the Director General and the Administrative Council. The Statutes shall, in particular, lay down the internal organization of PSBO in more detail. They should also define the responsibilities of the programming staff,

(e) adopt PSBO's Bye-laws, after consultation with the Director General and the Administrative Council. The Bye-laws shall, in particular, regulate the matters expressly identified in this Law, as well as any other matters requiring detailed internal regulation of a binding nature,

(f) advise the Director General on general programming matters and assist in carrying out programming responsibilities,

(g) ensure that the public service programming remit as defined in this Law is actually fulfilled. To this end, it may demand modifications of the scope, emphasis or overall quality of programming. It may declare, stating its reasons in writing, that certain broadcasts violate programming principles laid down in this Law, and may instruct the Director General, after hearing his or her position, to discontinue such violation or to ensure that no further violation occurs.

The Council may not review individual programs prior to their broadcast.

Article 12 - The Administrative Council

- §1 The Administrative Council shall supervise the business affairs of PSBO, both internal and external, with the exception of matters relating to programming.
- §2 It shall be composed of seven members. They shall be experts in matters of administration and finance and may not in the exercise of their function represent their own interests or those of third parties.
- §3 The Administrative Council members shall not belong to or work for the government or the PSBO itself, or be members of parliament or members of the Broadcasting Council.
- §4 The Administrative Council members shall be appointed for a four-year period. Reappointment for a maximum of two further periods shall be possible.
- §5 If for whatever reason a member is incapable of performing his or her duties, or if he or she has not attended Administrative Council meetings for a period exceeding three months and if at least seven members of the Broadcasting Council are convinced that he or she will not resume his or her activity within a reasonable period of time, the Broadcasting Council shall revoke him or her and replace him or her by another person who shall finish the revoked member's remaining term of office. The provisions of §2 above and of Article 11§14(c) shall apply.
- §6 The Administrative Council shall elect its own Chairman and set up its own Rules of Procedure.
- §7 The Administrative Council shall lay down binding Rules on financial matters, in consultation with the Director General.

§8 The Administrative Council shall take decisions with the majority of the members present. Where voting is equal, the vote of the Chairman shall be decisive.

§9 The Administrative Council shall meet in principle at least once per month. It shall also meet
in extraordinary session whenever at least two of its members request a meeting.

§10 Members of the Administrative Council shall receive yearly global compensation of their expenses amounting to one month's salary of the Director General. In addition, if they reside outside the city where the Administrative Council meetings take place, they shall be entitled to reimbursement of their reasonable travel and accommodation expenses.

§11 The Administrative Council shall

(a) represent PSBO in all dealings with the Director General

(b) conclude the service contract with the Director General

(c) advise the Director General on business matters not related to programming

(d) approve PSBO's budgets and yearly accounts

(e) verify, on the basis of transparent accounts, and ensure, that public funds are used exclusively for the fulfillment of the public service remit, rather than for subsidizing commercial activities which may be carried out outside that remit.

§12 The Administrative Council's consent shall be necessary for

(a) the conclusion of service contracts with the Directors and any other employees whose salary exceeds the highest class of the staff salary scale

- (b) the conclusion of trade union agreements
- (c) the acquisition and sale of companies or of shares therein
- (d) the acquisition, sale and mortgaging of property
- (e) the taking-up of bank credits and the granting of financial guarantees and securities
- (f) the conclusion of contracts concerning investments, other than in programming, if the total amount to be paid by PSBO exceeds ...
- (g) the expenditure of any money not provided for in the approved budgets.

Article 13 - The Director General

- §1 The Director General shall have final responsibility for programming and shall ensure that programs are consistent with the programming principles laid down in this Law and do not violate any other laws.
- §2 The Director General shall manage PSBO independently and shall be responsible for all its operations and activities.
- §3 The Director General shall represent PSBO both in court and out of court.
- §4 The Director General shall be appointed for a five-year term. Re-appointment is possible. As long as no successor has been appointed after the expiration of his or her term, the Director General shall continue in office if he or she is prepared to do so; otherwise, his or her functions shall be taken over by the Deputy.
- §5 The Director General shall not be a member of parliament.

- §6 The Director General may not be dismissed unless at least eight members of the Broadcasting Council decide to replace him or her by another person on whom they have agreed. In such a case, that other person shall finish the dismissed Director General's remaining term of office.
- §7 The Director General shall appoint one of the Directors as his or her Deputy, for a period not exceeding his or her own mandate.

Article 14 - Public Funding

- §1 PSBO's main source of funding shall be the broadcast receiving license fee, supplemented, in particular, by revenue from advertising and sponsorship.
- §2 The broadcast receiving license fee shall be due for radio and television receivers which are in a technical state to receive radio or television programs, whether via individual off-air reception or via community antennae or a cable system, and whether or not the receiver is portable (including receivers incorporated into cars).
- §3 Per household, only one receiver of each kind shall be counted.
- §4 Households with radio receivers only (one or more) shall be liable for the radio receiving fee alone.
- §5 Households with television receivers only (one or more) shall be liable for the television receiving fee alone.
- §6 Households which have at least one radio receiver and one television receiver shall be liable for both receiving fees.

- §7 Households whose combined total gross annual revenue does not exceed, per adult, the minimum of the yearly State pension, and 50% thereof per child, shall be entitled to request a 50% reduction, upon provision of the necessary evidence to PSBO. The resultant loss in receiving license fee revenue shall be compensated from the State budget on an annual basis.
- §8 Hotels shall be liable for one fee per ten rooms equipped with receivers.
- §9 Any other entity shall be liable for one fee per 20 employees or other persons who are normally in a position to receive radio and/or television programs on its premises. However, enterprises engaged in the production, repair, installation, sale or hire of radio and/or television receivers shall be liable for only one fee per shop or outlet.
- §10 Each household, hotel or other entity which is connected to electricity shall be presumed to have at least one radio and one television receiver which is in a technical state to receive radio and television programs. Where this is not the case, a written declaration to that effect shall be made to PSBO. Such declaration shall be corrected in writing whenever it no longer holds good.
- §11 Anyone making a false declaration under §10 above, or not making the necessary correction under the same paragraph within one month of the beginning of the liability, shall be liable for retroactive payment for the entire period in question. However, the minimum amount payable shall be the equivalent of one year's receiving fee.
- §12 The amount due shall be automatically added to the electricity bill, and be collected together with it.
- §13 The electricity company shall at once transfer the collected money to PSBO, after deduction of 1% thereof as global compensation for its own expenses.

- §14 The monthly fee for the radio and for the television receiving license shall be fixed by Parliament, having due regard to the financial needs of PSBO for the complete fulfillment of its statutory objectives as laid down in Article 2 above, and taking into account any revenue from other sources (such as advertising/sponsorship) which PSBO may reasonably be expected to obtain. It shall be valid for at least five years, subject to automatic inflation indexation.
- §15 As long as Parliament does not modify the license fee, it shall automatically continue for one-year periods, including the automatic inflation indexation.
- §16 PSBO shall be entitled to ask for relevant information if it suspects that §11 above may be applicable. Any decision taken by PSBO in the context of §11 above may be appealed against to the competent (administrative) court.
- §17 It shall constitute a misdemeanor, and be punishable as such by a fine amounting to the equivalent of between six times and twenty-four times the value of the applicable monthly license fee or fees
- (a) if a false declaration is made under §10 above, or if the correction under the same paragraph is not made within one month of the beginning of the liability
- (b) if payment is not made for more than three months whilst the receiver continues to be possessed for reception.

[Alternative Article 14 – Public Funding:]

- §1 Parliament shall fix, after consultation with the Administrative Council, the yearly attribution to PSBO from the State budget, having due regard to the financial needs of PSBO for the complete fulfillment of its statutory objectives as laid down in Article 2 above, and taking into account any revenue from other sources

(such as advertising/sponsorship) which PSBO may reasonably be expected to obtain.

§2 Payment shall be made in two equal installments, on 1 April and 1 October.

§3 As long as there is no parliamentary decision, PSBO shall receive, on the dates indicated in §2 above, the same amount as under the previous budget, augmented by the percentage of inflation that has occurred in the preceding year.]

Article 15 - Securing of Evidence

§1 PSBO shall make complete sound and video recordings of all radio and television programs transmitted by it. Such recordings shall be preserved for a minimum of three months. If a request for a right of reply, a demand for rectification or a request for review by the Broadcasting Council is received within this period, the recording shall be preserved until the matter is definitively resolved.

§2 Any person who can plausibly demonstrate in writing that his or her rights may have been affected by a given broadcast may request a copy thereof from PSBO, at his or her own expense.

Article 16 - Legal Supervision

§1 PSBO shall be subject to legal supervision by the Government.

§2 The Government may request from any of the organs of PSBO written information on any activities or omissions which, in the Government's view, violate the present Law.

§3 The Government may instruct PSBO to take the action necessary to stop the violation.

§4 PSBO may directly institute proceedings with the administrative court against any such instructions.

§5 Measures pursuant to §2 and §3 above shall be permissible only if the competent organs of PSBO fail to carry out their supervisory duties within a reasonable period or if more extensive supervisory measures are required by the Government. The Government has the right to fix a reasonable time limit within which the organs concerned shall carry out their supervisory responsibilities.

§6 Any measures taken pursuant to these provisions shall not violate PSBO's freedom of information and expression.

Article 17 - Transitional Provisions

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Article 18 - Entry into Force

Organizational Chart of Interim Media Commission

The Interim Media Commission

